IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3639 OF 2005

Prabhakar Sonaji Wagh ..Applicant

Vs.

The State of Maharashtra ..Respondent

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Mr.S.R.Chtinis Senior Counsel with
Mr.R.D.Suryawanshi for Applicant
Mr.Rajesh More A.P.P. for State

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 04.10.2005
DATE OF PRONOUNCING THE ORDER : 18.10.2005

P.C.

1. Heard the learned senior counsel for the applicant i.e. original accused and the learned A.P.P. for the State.

2. The applicant is seeking bail. The applicant has been convicted under Section 376C of IPC for committing rape on P.W.1 Deepali. Mr.Chitnis

submitted that the applicant is aged 63 years. Moreover, the applicant was on bail during the trial and he has not misused the liberty granted to him. This statement is not controverted on behalf of the prosecution.

3. Mr.Chitnis further submitted that the maximum sentence of imprisonment which can be imposed under Section 376-C is five years, however, the learned Sessions Judge has imposed sentence of imprisonment of ten years on the appellant-applicant which is clearly erroneous and illegal. On perusal of the provisions of Section 376-C which are reproduced below, I find much merit in this submission.

4. Mr.Chitnis further submitted that it is the prosecution case that the applicant was a trustee of the hostel where the prosecutrix was an inmate and the applicant committed rape on the prosecutrix during the period of 'Ganpati and Navratri' festivals of the year 2003 and on 29.2.2004. Mr.Chitnis has submitted that the learned Sessions Judge framed the point for determination as to whether the applicant was trustee of the hostel and

whether he had committed rape on the prosecutrix during the ‘Ganpati and Navratri’ festivals of 2003 and thereafter on 29.2.2004. The said points have been answered in the affirmative by the learned Sessions Judge. Mr.Chitnis, submitted that however there is no evidence to show that the applicant was a Superintendent/Manager/Trustee of the hostel.

. Section 376C of the IPC reads as under:

. ‘‘ Intercourse by superintendent of jail, remand home etc.,-- Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall

be punished with imprisonment of either description for a term which may extent to five years and shall also be liable to fine.

[EMPHASIS SUPPLIED]

. Explanation I.--"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates."

4. In the present case, five witnesses have been examined by the prosecution i.e. the prosecutrix P.W.1 Deepali, P.W.2 Swati who was another student staying in the said hostel, P.W.3 Anjali who was the mother of the prosecutrix, P.W.4 Dr.Shilpa Jambhale who is the Doctor who examined the prosecutrix and P.W.5 A.P.I.Pandhare who is the Investigating Officer. P.W.Nos.2 to 5 do not state

anywhere in their evidence that the applicant was the trustee of the said hostel. It is true that P.W.1 Deepali does state in her examination-in-chief that the applicant was trustee of the hostel. However, in the course of cross-examination, it has been brought on record that her statement in her examination in chief that the accused was trustee of the said hostel is an omission. The said omission has been proved through Investigating Officer P.W.5 A.P.I.Pandhare. Thus, it is seen that there is no material on record to show that the applicant was a trustee of the said hostel.

5. Moreover, in the present case, it is the case of the prosecutrix that the applicant committed rape on her during the Ganpati festival and Navratri festival in the year 2003 and thereafter on 29.2.2004. Though Deepali had met with her mother after Ganpati and Navratri festivals in 2003 and stayed with her mother during Diwali festival in the year 2003, yet she has not disclosed to her mother about the applicant committing rape on her during the Ganpati and Navratri festival of 2003.

The last incident in the present case has taken place on 29.2.2004. However, admittedly the FIR has been lodged on 6.3.2004. Mr.Chitnis submitted that there is no plausible explanation coming forward from the prosecution as to delay in filing the FIR. On perusal of the evidence, I find some merit in this submission. Looking to these facts and the other facts and circumstances including the fact that there is no evidence on record to show that the applicant was a trustee of the said hostel, I am inclined to grant bail to the applicant.

6. The applicant-Prabhakar Sonaji Wagh to be released on bail in the sum of Rs.50,000/- with one or two sureties to make up that amount. The applicant shall report twice in a month i.e. on second and fourth Sundays of every month to Kalyan Taluka Police Station during the pendency of the appeal.

7. Application is disposed of.

[V.K.TAHILRAMANI,J.]